

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

CHARI and MATTHEW LEHAN,
Parents of M.L., A Minor,

Petitioners,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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No. XX-XXXV

Special Master Christian J. Moran

Filed: August 22, 2013

Reissued as Redacted:

September 5, 2013

Stipulation; measles-mumps-rubella
(MMR) vaccine; Prevnar vaccine;
Varicella vaccine; encephalopathy;
acute disseminated
encephalomyelitis (ADEM)

Edward M. Kraus, Law Offices of Chicago Kent, Chicago, I.L., for Petitioners;
Chrysovalantis P. Kefalas, United States Department of Justice, Washington, D.C., for
Respondent.

UNPUBLISHED DECISION¹

On August 16, 2013, respondent filed a joint stipulation concerning the petition for compensation filed by Chari and Matthew Lehan, on behalf of their son, M.L., on March 2, 2010. In their petition, petitioners alleged that the Measles-Mumps-Rubella ("MMR"), Prevnar, and Varicella vaccines, which are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. §100.3 (a), and which their son received on March 16, 2007, caused him to suffer encephalopathy and acute disseminated encephalomyelitis ("ADEM") resulting in developmental delays. Petitioners represent that there has been no prior award or settlement of a civil action for damages on M.L.'s behalf as a result of his condition.

Respondent denies that M.L. suffered the onset of an encephalopathy within the time period set forth in the Table and denies that the MMR, Prevnar, and Varicella vaccines are the cause of M.L.'s alleged ADEM, any other injury, or his current condition.

¹When this decision was originally issued, the parties were notified that the decision would be posted in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). Petitioners were also notified that they could seek redaction pursuant to § 300aa-12(d)(4)(B); Vaccine Rule 18(b). Petitioners made a timely request for redaction and this decision is being reissued with the name of the vaccinee redacted to his initials.

Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- A. A lump sum payment of \$163,587.00 in the form of a check payable to Chari and Matthew Lehan, petitioners, for past reimbursable expenses; and**
- B. A lump sum payment of \$436,413.00 in the form of a check payable to petitioners, Chari and Matthew Lehan, as parents and natural guardians of M.L..**

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case XX-XXXV according to this decision and the attached stipulation.²

Any questions may be directed to my law clerk, Mary Holmes, at (202) 357-6353.

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master

² Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

CHARI and MATTHEW LEHAN,
Parents of [REDACTED], a Minor,

Petitioners,

v.

SECRETARY OF
HEALTH AND HUMAN SERVICES,

Respondent.

No. [REDACTED]

Special Master Christian J. Moran
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. On behalf of their son, [REDACTED] petitioners filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to [REDACTED]'s receipt of the Measles-Mumps-Rubella ("MMR"), Prevnar, and Varicella vaccines, which vaccines are contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. [REDACTED] received MMR, Prevnar, and Varicella vaccines on or about March 16, 2007.
3. The vaccines were administered within the United States.
4. Petitioner alleges that [REDACTED] suffered the first symptom or manifestation of the onset of an encephalopathy within the time period set forth in the Table as a consequence of receiving the MMR vaccine or, alternatively, that [REDACTED] sustained a vaccine-related injury diagnosed as acute disseminated encephalomyelitis ("ADEM") as a result of receiving the MMR, Prevnar, and

Varicella vaccines. Petitioners further allege that [REDACTED] experienced the residual effects of his injury for more than six months.

5. Petitioners represent that there has been no prior award or settlement of a civil action for damages as a result of [REDACTED]'s condition.

6. Respondent denies that [REDACTED] suffered the onset of an encephalopathy within the time period set forth in the Table and denies that the MMR, Prevnar, and Varicella vaccines are the cause of [REDACTED]'s alleged ADEM or any other injury or his current condition.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioners have filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

(a) A lump sum payment of \$163,587.00 in the form of a check payable to Chari and Matthew Lehan, petitioners, for past unreimbursable expenses; and

(b) A lump sum payment of \$436,413.00 in the form of a check payable to petitioners, Chari and Matthew Lehan, as parents and natural guardians of [REDACTED]

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioners have filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioners and their attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. The parties and their attorneys further agree and stipulate that, except for any award for attorneys' fees and litigation costs, the money provided pursuant to this Stipulation will be used solely for the benefit of [REDACTED] as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

13. Petitioners represent that they presently are, or within 90 days of the date of judgment will become, duly authorized to serve as guardians of [REDACTED]'s estate under the laws of the State of Illinois. No payments pursuant to this Stipulation shall be made until petitioners provide the Secretary with documentation establishing their appointment as the guardians of [REDACTED]'s estate. If petitioners are not authorized by a court of competent jurisdiction to serve as guardians of the estate of [REDACTED] at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian of the estate of [REDACTED] upon submission of written documentation of such appointment to the Secretary.

14. In return for the payments described in paragraphs 8 and 9, petitioners, in their individual capacities and as legal representatives of [REDACTED], on behalf of themselves, [REDACTED] and his heirs, executors, administrators, successors or assigns, do forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of [REDACTED] resulting from, or alleged to have resulted from, the MMR, Prevnar, and Varicella vaccines administered on or about March 16, 2007, as alleged by petitioners in a petition for vaccine compensation filed on or about March 2, 2010, in the United States Court of Federal Claims as petition No. 10-137V.

15. If [REDACTED] should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

16. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

17. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated

and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

18. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that [REDACTED] suffered the onset of an encephalopathy within the time period set forth in the Table or that the MMR, Prevnar, and Varicella vaccines are the cause of [REDACTED]'s alleged ADEM or any other injury or his current condition

19. All rights and obligations of petitioners hereunder shall apply equally to petitioners' heirs, executors, administrators, successors, and/or assigns as legal representatives of [REDACTED]

END OF STIPULATION

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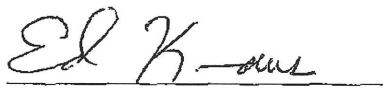
Respectfully submitted,

PETITIONERS:

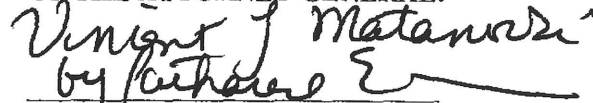

CHARI LEHAN


MATTHEW LEHAN

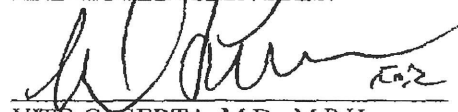
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Dated: August 16, 2013